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FIRST GENERAL COUNSEL'S REPORT

MUR 6217

DATE COMPLAINT FILED: October 6, 2009
DATE OF NOTIFICATION: October 14, 2009
DATE OF LAST RESPONSE: November 23, 2009
DATE ACTIVATED: December 18, 2009

STATUTE OF LIMITATIONS: August 11, 2014

COMPLAINANT:

Louisiana Democratic Party, by Chris Wittington, Chair

RESPONDENTS:

Commerce, Hope, Innovation & Progress PAC
and Danna S. Lane, in her official capacity as
treasurer
Haley's PAC and Henry Barbour, in his official
capacity as treasurer¹
Chip Pickering
David Vitter for U.S. Senate and William Vanderbrook,
in his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(8)
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)
11 C.F.R. § 110.6

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I INTRODUCTION

The complaint alleges violations of 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b) stemming from a \$5,000 contribution to David Vitter for U.S. Senate ("Vitter Committee") made on August 11, 2009 by Haley's PAC and its treasurer ("Haley's PAC"), a multi-candidate political

¹ Austin Barbour was the treasurer of Haley's PAC at the time the complaint was filed. The PAC filed an amended Statement of Organization on December 10, 2009, stating that its treasurer is now Henry Barbour.

1 action committee associated with Mississippi Governor Haley Barbour, that allegedly was
2 reimbursed by Commerce, Hope, Innovation & Progress PAC and Danna S. Lane, in her official
3 capacity as treasurer ("CHIP PAC"), a multi-candidate political action committee sponsored by
4 former Congressman Chip Pickering. The complaint bases its allegations on the following: (1) in
5 the same week that Haley's PAC contributed \$5,000 to the Vitter Committee, Haley's PAC
6 received a contribution in an identical amount from CHIP PAC; (2) based on its receipt and
7 contributions history, it was not common for Haley's PAC to make contributions; in fact, Haley's
8 PAC's contribution to the Vitter Committee was only one of two it had made during 2009, and
9 Haley's PAC disclosed only \$13,281.37 cash outstanding at the end of the reporting period in
10 which it made the Vitter contribution; (3) the contribution to Haley's PAC constituted CHIP
11 PAC's first contribution in 2009; (4) there are media-sensitive reasons Chip Pickering would want
12 to hide the fact that his PAC was providing support to Senator Vitter; and (5) Chip Pickering and
13 Austin Barbour, nephew to Haley and then-treasurer of Haley's PAC, work together at a lobbying
14 firm, and therefore had the opportunity to devise the alleged conduit scheme.

15 For the reasons set forth below, we recommend that the Commission dismiss this matter as
16 to Chip Pickering, Haley's PAC, and CHIP PAC, find no reason to believe as to David Vitter for
17 U.S. Senate and William Vanderbrook, in his official capacity as treasurer, and close the file.

18 II. DISCUSSION

19 The complaint alleges that CHIP PAC may have made a contribution in the name of
20 Haley's PAC to the Vitter Committee. The Act provides that no person shall make a contribution
21 in the name of another person or knowingly permit his name to be used to effect such a
22 contribution and no person shall knowingly accept a contribution made by one person in the name

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1 of another person. 2 U.S.C. § 441f. This prohibition extends to persons who knowingly help or
2 assist in making such contributions. See 11 C.F.R. § 110.4(b)(1)(iii).

3 On August 11, 2009, Haley's PAC made a \$5,000 contribution to the Vitter Committee.
4 Four days later, CHIP PAC made a \$5,000 contribution to Haley's PAC. Haley's PAC disclosed
5 both transactions on its FEC disclosure report filed with the Commission on September 20, 2009,
6 and CHIP PAC disclosed its contribution to Haley's PAC on its 2009 Year-End Report filed
7 January 26, 2010. Both CHIP PAC and Haley's PAC state that Haley's PAC's \$5,000
8 contribution to the Vitter Committee "was made in connection with a fundraising event held for
9 the Vitter Committee in Jackson, Mississippi on August 12, 2009." CHIP PAC Response at 2;
10 Haley's PAC Response at 2. The responses do not provide any other information about the
11 referenced fundraising event.

12 The complaint also alleges that Chip Pickering and Austin Barbour, the treasurer of
13 Haley's PAC at the time of the contributions in issue, had the opportunity to devise the alleged
14 conduit scheme as both worked together at the same lobbying firm. It cites to an Internet blog
15 report stating that Austin Barbour reportedly responded "no comment" to the allegations.
16 See Complaint at 3, footnote 6. In response, CHIP PAC provided affidavits from Chip Pickering
17 and its treasurer. Both affidavits state that the affiants had no communications or discussions, and
18 were aware of none, between CHIP PAC personnel and Senator Vitter or Vitter Committee
19 personnel regarding CHIP PAC's contribution to Haley's PAC. See Affidavits of Chip Pickering
20 and Danna S. Lane, attached to CHIP PAC's Response.

21 As for Haley's PAC, Heather Larrison, a political consultant, provided an affidavit stating
22 that she did not have communications, and was not aware of any, between Senator Vitter or
23 anyone else in the Vitter Committee concerning CHIP PAC's contribution to Haley's PAC or

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1 anyone else in the Vitter Committee concerning CHIP PAC's contribution to Haley's PAC or
2 Haley's PAC contribution to the Vitter Committee. See Affidavit of Heather Larrison attached to
3 Haley's PAC Response.

4 In sum, the complaint alleges specific facts which, if true, could implicate 2 U.S.C. § 441f
5 and, although not alleged, earmarking requirements.² If CHIP PAC and Haley's PAC did in fact
6 have an agreement to use CHIP PAC funds to make or reimburse the \$5,000 contribution to the
7 Vitter Committee, as the complaint alleges, the agreement would not have resulted in a violation of
8 2 U.S.C. § 441f had Haley's PAC made the required earmarking disclosures. See 11 C.F.R.
9 § 110.6(c). By not making the earmarking disclosures, if the allegation in the complaint is true, the
10 true source of the contribution to the Vitter Committee would not have been apparent from the
11 committees' disclosures. Nevertheless, given that the contribution from CHIP PAC to Haley's
12 PAC, and from Haley's PAC to the Vitter Committee, were each disclosed and the contributions
13 did not result in the Vitter Committee receiving an excessive or prohibited contribution, we do not
14 believe it would be an efficient use of the Commission's resources to pursue this matter further
15 given the relatively low amount at issue. Accordingly, we recommend that the Commission
16 exercise its prosecutorial discretion and dismiss the complaint as to Chip Pickering, Commerce,
17 Hope, Innovation & Progress PAC and Danna S. Lane, in her official capacity as treasurer, and
18 Haley's PAC and Henry Barbour in his official capacity as treasurer. See *Heckler v. Chaney*, 470
19 U.S. 821, 831 (1985).

² Although not alleged in the complaint, both PAC responses assert that there were no violations of the earmarking regulation at 11 C.F.R. § 110.6, which provides that all contributions made to a candidate, which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate. This regulation was promulgated pursuant to 2 U.S.C. § 441a(a)(3) to enforce the monetary limitations on contributions. The PACs' responses provide copies of the checks, which are unencumbered by any written designation, instruction, or other encumbrances, and affidavits stating that the contribution checks were not accompanied by any written encumbrance concerning the contribution.

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1 With respect to the Vitter Committee, the response points out that "[e]ven if the conjecture
2 and innuendo in the complaint were at some point proven to be correct, there are no facts asserted,
3 even buried among the baseless speculation, which would prove that Vitter for Senate knowingly
4 accepted an impermissible contribution." See Vitter Committee Response at 2. We agree that the
5 complaint alleges no facts concerning the Vitter Committee other than it accepted a contribution
6 from Haley's PAC, and no other information is available indicating a possible violation. The
7 contribution check was facially compliant with the Act and the Commission's regulations, and is in
8 fact neither excessive nor from an impermissible source. Accordingly, we recommend that the
9 Commission find no reason to believe that David Vitter for U.S. Senate and William Vanderbrook,
10 in his official capacity as treasurer, violated the Act or the Commission's regulations. Finally, we
11 recommend that the Commission close the file as to all respondents.

12 III. RECOMMENDATIONS

- 13 1. Dismiss the complaint's allegations as to Commerce, Hope, Innovation & Progress
14 PAC and Danna S. Lane, in her official capacity as treasurer.
- 15 2. Dismiss the complaint's allegations as to Haley's PAC and Henry Barbour, in his
16 official capacity as treasurer.
- 17 3. Dismiss the complaint's allegations as to Chip Pickering.
- 18 4. Find no reason to believe that David Vitter for U.S. Senate and William
19 Vanderbrook, in his official capacity as treasurer, violated the Act or the
20 Commission's regulations in this matter.
- 21 5. Approve the attached Factual and Legal Analyses.
- 22 6. Approve the appropriate letters.
- 23
- 24

7. Close the file as to all respondents.

Thomasenia P. Duncan
General Counsel

3-17-10
Date

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